

**38 CFR Part 8****RIN 2900-AR53****National Service Life Insurance - Veterans Affairs Life Insurance (VALife) Program**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern National Service Life Insurance (NSLI), among other things, to accomplish the following: implement provisions contained in legislation that authorized a new program of insurance; clarify which individuals are eligible to take actions on an insurance policy; explain various provisions regarding coverage and benefits under the new insurance program; and state which individuals are ineligible to benefit from the unlawful and wrongful killing of a veteran policyholder.

DATES: This final rule is effective **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Insurance Specialist, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842-2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 14, 2022, VA published a proposed rulemaking in the Federal Register pertaining to the implementation of a new program of life insurance that will begin issuing policies on January 1, 2023. (87 FR 42118). VA provided the public with a 60-day comment period which closed on September 12, 2022. VA did not receive any comments from the public. Based on the rationale set forth in the Federal Register, VA adopts the proposed rule, without change, as a final rule.

Executive Orders 12866 and 13563

Executive Orders (EO) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). EO 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action under EO 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This final rule would generally be small business neutral as it implements statutory provisions that only allow the United States to issue life insurance coverage to veterans with service-connected disabilities. 38 U.S.C. 1922B(a)(1) (“[T]he Secretary shall carry out a service-disabled veterans insurance program under which a veteran is granted insurance by the United States against the death of such individual occurring while such insurance is in force.”). Although there are statutes in 38 U.S.C. 1901-1988 that allow VA to purchase a large group life insurance policy from a private commercial insurer, those statutory authorities only apply to the Servicemembers’ Group Life Insurance Program, which provides life insurance coverage to Service members and their dependents and former Service members, and they do not provide VA with the authority to purchase a group life

insurance policy from a private insurer for purposes of providing VALife coverage. As such, the overall impact of this final rule would be of no benefit or detriment to small businesses, because these insurance policies would only be issued by the United States to veterans with service-connected disabilities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval. OMB has reviewed and approved the new collections of information and assigned OMB Control Numbers 2900-0906 and 2900-0918. When VA published the notice of proposed rulemaking in the Federal Register, we identified a third form that we proposed to utilize to collect information from the public to permit an individual to confirm their surrender of any current SDVI coverage at the time they apply for VALife. However, we have incorporated this collection of information into the form that will also

be used by VA to reinstate a VALife policy or to complete a insured's request to surrender coverage under VALife and is assigned OMB Control Number 2900-0918.

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

Congressional Review Act

Pursuant to Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on November 16, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,
*Assistant Director,
Office of Regulation Policy & Management,
Office of General Counsel,
Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 8 as set forth below:

PART 8—NATIONAL SERVICE LIFE INSURANCE

1. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901-1929, 1981-1988.

2. Amend § 8.0 by:

- a. Revising paragraph (e); and
- b. Adding paragraphs (f), (g), and (h).

The revision and additions read as follows:

§ 8.0 Definitions of terms used in connection with title 38 CFR, part 8, National Service Life Insurance.

* * * * *

(e) *What does the term “guardian” mean?* The term *guardian* means any state-appointed guardian or conservator, attorney-in-fact, or VA-appointed fiduciary, as defined in § 13.20, who is responsible for receiving VA benefits in a fiduciary capacity on behalf of the insured or the beneficiary, or to take the actions listed in § 8.32.

Note 1 to paragraph (e): If a VA-appointed fiduciary and either a state-appointed guardian/conservator or attorney-in-fact are not the same individual and both attempt to take conflicting actions on an incompetent insured's policy, the VA-appointed fiduciary shall have the exclusive authority to take actions on the policy.

(f) *What does the term “Veterans’ Affairs Life Insurance (VALife)” mean?* The term *Veterans’ Affairs Life Insurance*, or *VALife* in its abbreviated form, means a policy of insurance that is issued under section 1922B of title 38 U.S.C.

(g) *What does the term “application for VALife” mean?* The term *application for VALife* means a properly completed application form submitted online or through another medium prescribed by the Secretary.

(h) *What does the term “beneficiary” mean?* The term “beneficiary” means a principal or contingent beneficiary designated by the insured.

3. Amend § 8.1 by:

- a. Revising the section heading and paragraph (a);
- b. In paragraph (b), adding Note 3;
- c. In paragraph (c) introductory text, removing the word “Yes,” and adding in its place “For insurance other than VALife,”.

The revision and addition read as follows:

§ 8.1 Effective date for an insurance policy issued under section 1922(a) or 1922B of title 38 U.S.C.

(a) *What is the effective date of the policy?* The effective date is the date policy coverage begins. Benefits due under a policy issued under section 1922(a) are payable any time after the effective date. Benefits due under a policy issued under section 1922B are payable any time two years after the effective date.

(b) * * *

Note 3 to paragraph (b): If you apply for insurance coverage through an electronic medium, the date of delivery of the premium payment will be the date you authorize payment of the initial premium. In cases where the authorization does not result in the required premium payment because there were insufficient funds to cover the full initial premium, the delivery date of the premium payment will be the date your full initial premium is received by VA.

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4. Amend § 8.2 by adding paragraph (e) to read as follows:

§ 8.2 Payment of premiums.

* * * * *

(e) *What happens if a policyholder enrolled in VALife dies, surrenders or cancels coverage during the two-year enrollment period?* If a policyholder enrolls in VALife for an amount less than the statutory maximum and elects to apply for additional coverage at a later date and dies before completing the two-year waiting period for the additional VALife coverage amount, the beneficiary shall be refunded premiums that were paid for the additional VALife coverage, plus interest, in accordance with 38 U.S.C.

1922B(c)(3)(A). If a policyholder surrenders or cancels a VALife policy during the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before coverage is in force, the United States shall not return to the policyholder the premiums that were paid to purchase the coverage.

5. Revise § 8.6 to read as follows:

§ 8.6 Calculation of Time Period; Veteran's Age.

(a) If the last day of a time period specified in § 8.2 or § 8.3, or the last day allowed for filing an application for National Service Life Insurance or for applying for reinstatement thereof, or paying premiums due thereon, falls on a Saturday, Sunday, or legal holiday, the time period will be extended to include the following workday.

(b) For VALife, the premium will be determined using the age of the veteran at his or her nearest birthday on the effective date of the policy.

(c) For purposes of determining a veteran's eligibility for VALife under 38 U.S.C. 1922B(a)(3)(A), the age of the veteran at his or her last birthday prior to the date of application will be used.

(d) For purposes of determining a veteran's eligibility for VALife under 38 U.S.C. 1922B(a)(3)(B), with respect to a veteran who has attained 81 years of age, an initial

grant of service connection for a new or secondary condition for which the veteran applied for disability compensation before attaining 81 years of age will satisfy the eligibility criteria; however, VA will not grant insurance to such a veteran based on an increase in an existing disability rating, a grant of individual unemployability under 38 CFR 4.18, or a finding of incompetency under 38 CFR 3.353. VA will not issue a VALife policy to a veteran over age 95.

6. Amend § 8.7 by:

- a. Revising the section heading;
- b. In paragraph (a), in the first sentence, removing the phrase “Any policy” and adding, in its place, the phrase “Subject to paragraph (e), any policy”; and
- c. Adding paragraph (e).

The revision and addition read as follows:

§ 8.7 Reinstatement.

* * * * *

(e) Coverage issued under VALife that lapses for non-payment of premiums may only be reinstated if the former policyholder submits all premiums in arrears from their respective due dates, plus interest, to reinstate the coverage within two years of the date of the lapse and has not yet reached age 81.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0918.)

7. Amend § 8.10 by revising paragraph (a)(3) to read as follows:

§ 8.10 How paid.

(a) * * *

(3) Issued under sections 1904(c), 1922(a), and 1922B of title 38 U.S.C.

* * * * *

8. Amend § 8.11 by:

- a. Revising the section heading;
- b. In paragraph (a), adding a sentence at the end of the paragraph:
- c. In paragraph (b), removing “Upon” and adding, in its place, “For insurance other than VALife, upon”; and
- d. Adding paragraphs (j) and (k).

The revision and additions read as follows:

§ 8.11 Cash value.

(a) *** This paragraph shall not apply to VALife.

* * * * *

(j) Cash values that accrue for VALife will be developed using a multiple of the 1941 Commissioners Standard Ordinary Mortality Table and an interest rate of 3.5 percent per annum. Cash values will not accrue and will not be payable until the completion of the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2). If a VALife policy lapses or is surrendered before completion of the two-year waiting period, then any amounts that VA has collected, such as premium payments, shall be returned to the credit of the VALife revolving fund that is established under 38 U.S.C. 1922B(a)(5)(A)(i). If a veteran enrolls in VALife for an amount less than the statutory maximum and elects to apply for additional coverage at a later date, the cash value on the additional amount of coverage would not begin accruing until the end of the two-year waiting period for the additional coverage.

(k) The United States will pay the cash value, in full or in part, of any VALife policy, subject to the limitations in § 8.11(j), to insureds upon request through electronic medium or other method prescribed by the Secretary. Unless otherwise requested by the insured, a surrender will be deemed effective as of the end of the premium month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of payment for the cash value, whichever is later.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0918.)

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9. Amend § 8.13 by adding paragraph (e) to read as follows:

§ 8.13 Policy loans.

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(e) For VALife, the United States shall only issue policy loans if the Secretary determines that offering loans is administratively and actuarially sound.

10. Amend § 8.14 by adding paragraph (d) to read as follows:

§ 8.14 Provision for extended term insurance—other than 5-year level premium term or limited convertible 5-year level premium term policies.

* * * * *

(d) VALife shall not be extended automatically as term insurance until the insured has paid the required premiums during the two-year waiting period that is imposed by 38 U.S.C. 1922B(c)(2) before VALife coverage is in force.

11. Amend § 8.15 by designating the text as paragraph (a) and adding paragraph (b) to read as follows:

§ 8.15 Provision for paid-up insurance; other than 5-year level premium term or limited convertible 5-year level premium term policies.

* * * * *

(b) The United States shall not issue paid-up insurance under VALife until the insured has paid premiums during the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before VALife coverage is in force.

12. Amend § 8.19 by designating the text as paragraph (a) and adding paragraph (b) to read as follows:

§ 8.19 Beneficiary and optional settlement changes.

* * * * *

(b) If a beneficiary has been determined to have intentionally and wrongfully killed the insured, the provisions found in 38 CFR 9.5(e) shall be followed.

13. Add § 8.35 to read as follows:

§ 8.35 Eligibility for those insured under 38 U.S.C. 1922(a) to purchase insurance under 38 U.S.C. 1922B after December 31, 2025.

An insured under a Legacy Service Disabled Veterans' Insurance policy shall be eligible to purchase VALife coverage after December 31, 2025, upon cancellation of his or her Legacy Service Disabled Veterans' Insurance policy and surrender of any cash value that his or her coverage has accrued in accordance with 38 CFR 8.11. The policyholder must also submit a statement in a form that is prescribed by the Secretary, which clearly indicates that the policyholder desires to terminate his or her existing life insurance coverage in order to apply for VALife and initiate the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before such VALife coverage is in force.

(Authority: 38 U.S.C. 501, 1901-1929, 1981-1988)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0906.)

14. Add § 8.36 to read as follows:

§ 8.36 Issuance of coverage under section 1922B of title 38 U.S.C. following additional elections.

An insured who elects less than the maximum amount of VALife coverage under 38 U.S.C. 1922B(a)(4)(A) shall remain eligible to purchase additional VALife coverage up to the VALife statutory maximum. Any insured who elects to apply for additional VALife coverage shall be subject to the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before such additional VALife coverage is in force.

(Authority: 38 U.S.C. 501, 1901-1929, 1981-1988)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0906.)

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